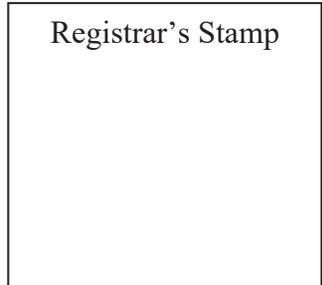


**COURT OF APPEAL OF ALBERTA**

**Form AP-3**

COURT OF APPEAL FILE NUMBER: 2501-0254AC  
TRIAL COURT FILE NUMBER: 2410 01231  
REGISTRY OFFICE: EDMONTON  
APPLICANT: BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION



STATUS ON APPEAL: INTERVENOR (PROPOSED)  
STATUS ON APPLICATION: APPLICANT

APPELLANT: AARON BROWN

STATUS ON APPEAL: APPELLANT

STATUS ON APPLICATION: RESPONDENT

RESPONDENTS: HIS MAJESTY THE KING IN RIGHT OF ALBERTA and RECOVERY ALBERTA: MENTAL HEALTH AND ADDICTION SERVICES

STATUS ON APPEAL: RESPONDENTS  
STATUS ON APPLICATION: RESPONDENTS

DOCUMENT: **APPLICATION FOR LEAVE TO INTERVENE OF BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION**

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**NOTICE TO RESPONDENT(S):**

AARON BROWN (Appellant)  
HIS MAJESTY THE KING IN RIGHT OF  
ALBERTA (Respondent)  
RECOVERY ALBERTA: MENTAL HEALTH  
AND ADDICTION SERVICES (Respondent)

**WARNING**

If you do not come to Court on the date and time shown below either in person or by your lawyer, the Court may give the applicant what it wants in your absence. You will be bound by any order that the Court makes. If you intend to rely on other evidence or a memorandum in support of your position when the application is heard or considered, you must file and serve those documents in compliance with the Rules. (Rule 14.41 and 14.43)

**PART I - NOTICE TO RESPONDENT(S):**

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: March 18, 2026  
Time: 9:30 am  
Where: Edmonton Law Courts  
Before: Single judge of the court (Rule 14.37)

**PART II - NATURE OF APPLICATION AND RELIEF SOUGHT:**

1. The British Columbia Civil Liberties Association (“**BCCLA**”) seeks leave to intervene in this appeal on the following terms:

- (a) BCCLA shall be permitted to file a factum limited to 20 pages or such other length as the Court may permit;
- (b) BCCLA shall be permitted to make oral submissions not exceeding 15 minutes, or such other time as the Court may permit; and
- (c) no costs shall be ordered for or against BCCLA for its involvement in this proceeding.

### **PART III - GROUNDS FOR MAKING THIS APPLICATION:**

#### **A. The Proposed Intervener, BCCLA**

2. BCCLA is a non-profit, non-partisan, unaffiliated advocacy group dedicated to promoting, defending, sustaining, and extending civil liberties and humans rights in British Columbia and Canada.

3. BCCLA has a history of involvement and has developed particular expertise in intervening in cases where state actions engage the *Canadian Charter of Rights and Freedoms* and interfere with civil liberties and human rights in the provision of health services. BCCLA has been granted intervener status in over 100 cases before the Supreme Court of Canada, and in multiple cases before provincial appellate courts, including three cases in the Alberta Court of Appeal.

4. BCCLA is actively engaged in research, advocacy, open letters and submissions to governments, administrative bodies and courts regarding the health, safety and rights of people living with substance use disorders.

5. For example, BCCLA was granted intervener status in the Supreme Court of Canada in *Canada (Attorney General) v. PHS Community Services Agency, et al.*, 2011 SCC 44, addressing the constitutionality of Canada's decision to not renew an exemption under the *Controlled Drug and Substances Act* for the operation of a safe injection site in Vancouver, Canada.

#### **B. The Application Decision**

6. In the Court below, the Crown argued that Alberta's decision to discontinue the Red Deer Overdose Protection Site (OPS) does not engage the *Charter* because:

- (a) there was no "substantive decision" giving rise to state action; and

- (b) neither section 7 nor section 15 creates a "freestanding" entitlement to a particular health service, even where previously provided.

7. The application judge rejected the Crown's argument that there was no "substantive decision" giving rise to state action, but nonetheless held the *Charter* was not engaged, finding that Mr. Brown's claim would "constitutionalize any program that serves a disadvantaged group" and "there can be no constitutional right to the continuation of measures that were voluntarily taken."

8. The application judge adopted the Crown's position that there can be no breach of s. 7 and s. 15 of the *Charter* on the basis that Mr. Brown is seeking a "positive right" to the Red Deer OPS to which he is not entitled.

### **C. BCCLA Meets the Test for Intervener Status**

9. BCCLA satisfies the test for intervener status as outlined in *Justice Centre for Constitutional Freedoms v Alberta*.<sup>1</sup>

10. This appeal raises important constitutional questions at the intersection of fundamental civil liberties, the delivery of harm reduction services, and the rights of vulnerable and marginalized communities – including the question of whether the government's conduct gives rise to reviewable state action. BCCLA has a particular interest in the subject matter of the appeal, and the outcome will have a direct impact on BCCLA given BCCLA's organizational purpose and mandate.

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<sup>1</sup> [\*Justice Centre for Constitutional Freedoms v Alberta\*](#), 2021 ABCA 295 at para 9.

11. BCCLA will provide unique expertise, perspective, and information that will assist the Court in determining the appeal.

**D. BCCLA Will Offer Useful Submissions, Insight and Perspectives**

12. If permitted to intervene, BCCLA intends to make submissions on whether the government's conduct gives rise to reviewable state action and on the application judge's discussion of "positive rights" in relation to that state action.

13. In broad strokes, BCCLA will address three primary arguments:

- (a) First, the distinction between so called "positive" and "negative" rights is irrelevant when determining whether state conduct is subject to *Charter* scrutiny. The determinative factor is the presence of government action, which includes the decision *not* to act. Once conduct is deemed subject to *Charter* scrutiny, it must be reviewed within the section 7 and section 15 frameworks without regard to whether the conduct is "positive" or "negative".
- (b) Second, funding decisions are not immune from *Charter* scrutiny, particularly where those decisions are tied to policy choices that affect life, liberty, and security of the person. BCCLA will also make submissions that harm-reduction services must be recognized as distinct from other addiction services for the purposes of applying the *Charter*, and that characterizing the elimination of a specific, scientifically proven treatment as a mere reallocation of healthcare resources risks allowing governments to circumvent constitutional review.

- (c) Third, the absence of a pre-existing constitutional entitlement to supervised consumption services does not immunize the government's withdrawal of those services from *Charter* scrutiny. Where the government creates a program integral to preserving the lives of a vulnerable population and then withdraws that program, thereby creating a significant risk of death and disease, that withdrawal constitutes state action engaging s. 7 of the *Charter*. This principle flows directly from *PHS*.

**E. Interests of Justice Favour Granting BCCLA Intervener Status**

14. BCCLA's intervention will not introduce any new facts or evidence, nor expand the scope of the dispute between the parties.
15. BCCLA's intervention will provide the Court with a perspective beyond those offered by the particular parties before the Court. BCCLA has a unique perspective and specialized expertise that will assist this Court's just determination of this appeal and the constitutional issues being raised.
16. BCCLA's intervention will not cause any undue delay or prejudice to the parties.
17. BCCLA will not seek costs and asks that no costs be awarded against it.
18. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**PART IV - MATERIAL OR EVIDENCE TO BE RELIED ON:**

19. The affidavit of Jerome Igbokwe, affirmed March 5, 2026.
20. BCCLA's Memorandum of Argument (filed with this Application).

21. Such further and other material as counsel pay advise and this Court may permit.

**PART V - APPLICABLE ACTS, REGULATIONS AND RULES:**

22. Rules 14.37(2)(e) and 14.58 of the Alberta Rules of Court.



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Rahool P. Agarwal  
Andrea Galizia  
**Counsel for the Proposed Intervener, BCCLA**

## Table of Authorities

*Justice Centre for Constitutional Freedoms v Alberta*, 2021 ABCA 295.